A

PP

v.

LEE YIT WENG

B

HIGH COURT MALAYA, IPOH
TEO SAY ENG JC
[CRIMINAL APPEAL NO: M6-45-20-04]
11 AUGUST 2010

C ***CRIMINAL LAW:*** *Dangerous Drugs Act 1952 - Section 39B(1)(a) - Trafficking in dangerous drugs - Whether the accused had been in possession of the drugs at the material time - Conduct of the accused - Effect of - Whether presumption under s. 37(da)(xvi) of the Dangerous Drugs Act could be drawn from the evidence - Effect of - Dangerous*
D *Drugs Act 1952, ss. 37(da)(xvi) & Evidence Act 1950, s. 8*

CRIMINAL LAW: *Dangerous drugs - Trafficking in dangerous drugs - Prima facie case - Whether established - Defence raised by the accused in relation to the break in the chain of evidence - Whether successfully*
E *established - Evidence adduced - Evaluation of - Effect of - Whether drug evidence tampered with - Whether alleged tampering successfully explained away by prosecution - Effect of - Whether prosecution established a prime facie case against the accused*

F On 22 February 2004, a police road block was set up in two places in Ipoh by SP5. At about 11.45pm, a metallic gold Proton Saga bearing registration number ACA 8972 was stopped, detained and brought in. Nothing incriminating was found on the driver of the vehicle but while the passenger of the vehicle ('the accused') was searched, he bolted. When apprehended, drugs were found
G in the accused's pouch. The accused was then informed of the offence he had committed, arrested and brought to the police station. The drugs were then marked and search lists were prepared and handed to the driver and the accused respectively. The exhibits and the parties were then handed over to SP8 who
H kept the exhibits safely under lock and key. Subsequently the exhibits were sent to the chemist, SP4, for analysis and SP4 confirmed that the exhibits had contained dangerous drugs. The accused was charged under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('DDA') for trafficking in dangerous drugs. There were
I two main issues that arose for determination before this court: (i)

whether the prosecution had established a *prima facie* case against the accused that he had trafficked in dangerous drugs; and (ii) whether there had been a break in the chain of evidence in relation to the exhibits seized.

Held (acquitting and discharging the accused):

(1) In proving custody or control of the drugs, the prosecution had brought in ample evidence to show that the accused had been carrying the said drugs. The conduct of the accused by running away whilst a search was conducted on him had been relevant under s. 8 of the Evidence Act 1950 to show that he had knowledge of what had been in his pouch. The proscribed drug after analysis had been confirmed by the chemist as methamphetamine. Thus the prosecution had successfully proven that the accused had been in actual possession of 182.2 grams of methamphetamine independent of s. 37(d) of the DDA and the amount of the drug had triggered the statutory presumption of trafficking under s. 37(da)(xvi) of the same Act. (paras 25 & 27-30)

(2) However, serious doubts as to the identity of the proscribed drug seized had been established by the defence *ie*, the colour of the proscribed drug at the time of seizure by SP5 was white but at the time when it was received by the chemist SP4 it was colourless and that there was a change in colour of the 16 plastic packets P7B (1-16) containing the proscribed drug from 'jerneh' to 'hitam'. The non-explanation of the prosecution as to the change in colour of the mentioned drugs and other discrepancies had resulted in a serious break in the chain of evidence. It was therefore incumbent upon the prosecution to provide the necessary link in the chain of evidence in calling all the officers who had handled the exhibits. The prosecution, however, had failed in providing such a link when it failed to call the 'anggota' who did the fingerprint-dusting on all the exhibits. No evidence had been led as to who the "anggota" was and for how long the exhibits were left with him for fingerprint-dusting before they were handed back to SP5. Thus, on this ground alone, the prosecution had failed to establish a *prima facie* case against the accused and he would not be called to enter his defence even though he had been caught red-handed with the drugs in his pouch. (paras 38 & 42)

Case(s) referred to:
Balachandran v. PP [2005] 1 CLJ 85 FC ***(refd)***
PP v. Ang Soon Huat [1990] 1 LNS 103 HC ***(refd)***
PP v. Poh Ah Kwang [2003] 2 CLJ 722 HC ***(refd)***
Tai Chai Keh v. PP [1948] 1 LNS 122 CA ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 180(1)
Dangerous Drugs Act 1952, ss. 37(da)(xvi), 39(i)(a), 39B(1)(a), (2)
Evidence Act 1950, s. 8
Federal Constitution, art. 145(3)
Poisons Act 1952, s. 9

For the prosecution - Zalina Hj Awang; DPP
For the defence - Dato' Naran Singh; M/s Naran Singh & Co

Reported by Sharmini Pillai

JUDGMENT

Teo Say Eng JC:

[1] The accused was charged as follows:

> Bahawa kamu pada 22 Februari 2004 lebih kurang jam 11.45 malam, di hadapan Klinik Kesihatan Greentown, di Jalan Raja Musa Aziz, Ipoh, di dalam Daerah Kinta, di dalam Negeri Perak, telah mengedar dadah berbahaya iaitu 182.2 gram Methamphetamine, dan oleh yang demikian kamu telah melakukan satu kesalahan di bawah seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah seksyen 39B(2) Akta yang sama.

[2] The accused claimed to be tried and the prosecution had called eight witnesses to prove its case against the accused. At the end of the prosecution case, I acquitted and discharged the accused without calling on him to enter his defence and now give my written reasons for his acquittal.

Prosecution Case

[3] On 22 February 2004, Kpl Kamsah bin Laili (SP5) was putting up a police road block at two places in Ipoh namely one at Jalan Kampar from 8pm to 10pm and the other at Jalan Raja Musa Aziz from 10.15 pm to 12 midnight. The police vehicle

which was used in the road block was a motorvan bearing registration number WCW 8972. The police personnel involved in the said road blocks were:

(a) L Kpl 65016 Abdul Rahman Daud.

(b) Kpl 108984 Ahmad Salleh bin Rabu Jalil.

(c) DL Kpl 116738 Mohd Zaki bin Ahmad.

(d) Kons 144317 Mohd Khairul Ehwan bin Md Desa.

(e) SP 14536 Ahmad Ruzaimi bin Hamzah.

(f) SP 14731 Meor Abdul Azim bin Ishak.

(g) Kpl 116623 Abdul Jamal bin Sabrah.

[4] All the above witnesses had been called and identified by SP5. On the same day, at about 11.45pm SP5 saw a metallic gold Proton Saga bearing registration number ACA 8972 from the city proceeding fast from Jalan Dato Onn Jaafar negotiating a bend coming towards Jalan Musa Aziz. The car suddenly stopped approximately 40 feet from the police road block. SP5 then instructed L Kpl Ahmad Salleh bin Rabu Jalil (SP7) to detain the car. SP7 did as instructed and removed some cones to allow the car to come to the police road block.

[5] SP5 and SP7 went to the driver of the car and asked the driver to stop the car engine. SP5 then asked the driver to produce his driving licence and his identity card. SP5 also instructed the driver to get out from the car for a body search. Nothing incriminating had been found from the body search.

[6] SP5 and SP7 then proceeded to the front passenger's side. SP5 instructed the front passenger, a male Chinese to get down from the car and when the front passenger got out of the car, SP5 took him to the back of the car for body search. SP5 noticed that the male Chinese was wearing a waist pouch. While examining his body and waist pouch, the male Chinese suddenly bolted. SP7 gave chase. SP7 tried to arrest the male Chinese when he fell. The male Chinese put up a struggle and managed to free himself and continued to run. SP7 with the help of SP5 and Kons Khairul finally managed to arrest the said male Chinese some 50 meters away from where the male Chinese was first

detained. The male Chinese was then brought back to the car. SP5 said the waist pouch which the male Chinese was wearing was still zipped up. SP5 opened the waist pouch and examined every pocket of the waist pouch. SP5 found three white envelopes and a yellow envelope in the third pocket of the waist pouch. The first and second white envelopes were each found to contain two plastic packets with materials suspected to be syabu.

[7] The third white envelope was also found to contain one plastic packet inside which were 12 plastic packets containing materials suspected to be syabu and the last yellow envelope was found to contain a black weighing machine with the brand 'Tanita'. SP5 then informed the male Chinese of the offence committed and instructed SP7 to arrest the male Chinese. SPS then brought the male Chinese and the driver SP6 together with the exhibits to Balai Polis Pekan Baru Ipoh. OKT was identified to be the male Chinese, the front passenger and SPG was identified as the driver of the car ACA 8972.

Analysis Of The Exhibits By The Chemist

[8] The exhibits containing the proscribed drugs which form the subject matter of the charge were sent to the chemist, SP4 for analysis. The contents of the said exhibits that is, 16 plastic packets marked B1, B2, C1, C2, D-1-1 to D-1-12 after analysis were confirmed to be 182.2 grams of methamphetamine as listed in the 1st schedule of the Dangerous Drugs Act 1952.

Chain Of Evidence In Relation To The Movement Of Drugs Found

[9] After the exhibits were brought back to Balai Polis Pekan Baru, SP5 examined and marked the exhibits as follows:

(a) One waist pouch was marked as A.

(b) The first white envelope was marked B and its contents that is, plastic packets, were marked B1 and B2.

(c) The second white envelope was marked C and its contents, that is, two plastic packets were marked C1 and C2.

(d) The third white envelope was marked D and its contents that is, one plastic packet containing 12 plastic packets which were marked D-1-1 to D-1-12.

(e) The yellow envelope was marked E and its contents ie, a weighing machine branded Tanita was marked E1 SP5 signed his name and wrote Pekan Baru Report 1092/04 on each of the above mentioned exhibits.

[10] After marking the aforesaid exhibits, SP5 issued two search lists, that is, one (P20) to the driver (SP6) and the other (P21) to the accused. Both the search lists were signed by the driver and the accused respectively.

[11] On 23 February 2004 at about 2am, SP5 brought the driver (SP6) and the accused to Pejabat Bahagian Narkotik IPD Ipoh and handed the driver and the accused together with the exhibits to the investigating officer SP8 (hereinafter to be referred as I.O). One handing over form (P22) was signed between SP5 and SP8.

[12] SP8 confirmed having received the following exhibits from SP5 as follows:

(a) One black bag marked A.

(b) 3 white envelopes marked B, C and D respectively containing 16 plastic packets marked B1, B2, C1, C2, D-1-1 to D-1-12

(c) One yellow envelope marked E.

(d) One big plastic packet marked D1.

(e) One weighing machine branded Tanita marked E1.

(f) One bunch of keys without any marking.

(g) One motorcar Proton Saga ACA 8972

[13] SP8 examined the exhibits and found them to be correct. He then kept all the exhibits in his steel cabinet under lock and key in his office and he kept the car in the parking place at Pejabat Narkotik Ipoh. On 23 February 2004 at about 12 noon SP8 took out the exhibits, ie:

(a) 3 white envelopes marked B, C and D.

(b) One orange envelope marked E.

(c) 1 plastic packet marked D1

(d) 12 plastic packets marked D-1-1 to D-1-12.

(e) 2 plastic packets marked B1 and B2.

(f) 2 plastic packets marked C1 and C2 to Bahagian D6, IPK for fingerprint dusting. SP5 was informed by anggota Bahagian D6 that the results were negative. SP5 then brought back the exhibits to his office and kept them in his steel cabinet.

[14] On the same day, at 3.30pm, SP8 took out the exhibits from his steel cabinet and instructed SP1 to take photographs of the exhibits and the motorcar ACA 8972 (P4 A-P)

[15] On 25 February 2004 at about 2pm, SP8 took out the exhibits from his steel cabinet and did the packing as follows:

(a) He put the 16 plastic packets marked B1, B2, C1, C2 and D-1-1 to D-1-12 into an envelope marked E1 and wrote Pekan Baru Report 1092/04 his name and the date ie, 23 February 2004 on the envelope.

(b) He put the black bag marked A into another envelope which he marked as 'E2'. He also wrote Pekan Baru Report No. 1092/04 his name and the date 23 Febuary 2004 on the envelope.

(c) He then placed the three white envelopes marked B, C and D into another envelope which he marked as 'E3'.

(d) He put the yellow envelope marked E and the weighing machine branded 'Tanita' marked E1 into one envelope marked 'E4'. He also wrote Pekan Baru Report No. 1092/04, his name and the date 23 February 2004 on the envelope.

(e) He put the plastic packet marked as D1 into an envelope which he marked as 'E5'. He also wrote Pekan Baru Report No. 1092/04, his name and the date 23 February 2004 on the said envelope.

(f) He put a set of keys into an envelope which he marked as 'E6'. He also wrote Pekan Baru Report 1092/04, his name and the date 23 February 2004 on the envelope.

[16] After packing the exhibits, SP8 kept the envelopes marked E2 to E6 in his steel cabinet under lock and key and he sent the envelope marked E1 (P7) to the Chemist SP4 at Jabatan Kimia Ipoh on the same day at about 2.53pm. SP8 was issued with an official receipt by SP4 (P17).

[17] On 26 February 2004 at about 3.40pm, SP8 seized one maroon colour T-shirt (long sleeves), one pair of jeans trousers from the accused and he marked the long sleeve shirt as W1 and the trousers as W2. On the same day at about 4.10pm, SP8 also seized from SP6 a white T-shirt which he marked as W4 and a pair of shorts marked as W3. On 26 February 2004 at about 5pm SP8 instructed the photographer SP1 to take photographs of the clothings of the accused and the driver (SP6) which were marked W1 to W4. (See four photographs marked P6A-D).

[18] On 5 May 2004 at about 2.30pm, SP5 went to Jabatan Kimia Ipoh to collect back the exhibits (P7) together with the chemist report (P18). On the same day SP8 sent all the exhibits ie, the envelope marked E1 (P7) together with seven other envelopes marked E2 to E8 and a motorcar Proton Saga ACA 8972 to SP1 Penyelia Setor Barang kes at the Setor Barang Kes, IPD Ipoh. The exhibits were registered in the Buku Pendaftaran Barang Kes as D182/04. One "Borang Penyerahan barang-barang kes" was signed between SP2 and SP8 (P24).

[19] SP8 told the court that when he sent the envelope marked E1 (P7) to Jabatan Kimia Ipoh, the envelope and the seals PDRM 528 were in good condition. Similarly when he collected the envelope marked E1 (P7) from Jabatan Kimia Malaysia, the envelope (P7) and the seals Jabatan Kimia Malaysia were also in good condition. SP8 further told the court when he sent P7 to the Setor Barang Kes for registration the envelope and its seals were in good condition. This was also confirmed by SP2 the Penyelia Setor Barang Kes.

Contention By The Defence

[20] At the end of the prosecution case the learned counsel for the defence made no submission on the element of possession and the presumption of trafficking of the proscribed drug but instead attacked the prosecution case on two grounds:

(a) Where the dangerous drug seized was methamphetamine which was found in the First Schedule of the Dangerous Drugs Act 1952 as well as under the sub-heading 'Analeptics and Central Stimulants' in the Appendix of the First Schedule of the Poisons Act 1952. The court is empowered to amend the charge to one of possession under s. 9 of the Poisons Act 1952.

(b) With regards to the handling of exhibits, the learned counsel seriously challenged the evidence of SP5, SP7 and SP8 that the contents of the 16 plastic packets (P7B (1-12) had been tampered with and the proscribed drug which was sent to the chemist was not the drug seized by SP5.

The Elements Of The Offence

[21] The accused was charged for trafficking in a dangerous drug, to wit 182.2 grams of Methamphetamine under s. 39(i)(a) of the Dangerous Drugs Act 1952. It is the duty of the prosecution to establish a *prima facie* case at the end of the prosecution case against the accused that:

(a) He was trafficking in a dangerous drug, to wit, 182.2 grams of Methamphetamine and

(b) There was no break in the chain of evidence in relation to the exhibits seized.

The Burden On The Prosecution

[22] Section 180(1) of the CPC provides:

> When the case for the prosecution is concluded the court shall consider whether the prosecution has made out a *prima facie* case against the accused.

[23] What then constitutes a *prima facie* case? The Federal Court in *Balachandran v. PP* [2005] 1 CLJ 85 described 'a *prima facie* case' in the following terms:

> A *prima facie* case is one that is sufficient for the accused to answer, and the evidence adduced must be such that it can only be surmounted by the evidence in rebuttal. The force of that evidence must, if unrebutted, be sufficient to induce a state of belief that the facts as they stand are as stated in the charge. In

order to make a finding the court must, at the close of the prosecution's case, undertake a positive evaluation of the credibility and reliability of all the evidence adduced to determine whether all the elements of the offence have been established. If the evidence is unrebutted, and the accused remains silent, he must be convicted. Therefore, the test to be applied at the end of the prosecution's case is whether there is sufficient evidence to convict the accused if he chooses to remain in silent, which if answered in the affirmative means that a *prima facie* case has been made out. This requires a consideration of the existence of any reasonable doubt in the prosecution's case, which if it exists, cannot lead to the finding of a *prima facie* case having been made out.

[24] It is clear that the court must subject the prosecution evidence to maximum evaluation to determine whether all the essential ingredients have been proven. The maximum evaluation requires the court to test, scrutinize and evaluate the prosecution evidence thoroughly from all angles. It is a test of credibility and reliability of the prosecution evidence.

Evaluation Of Evidence And Findings

Whether The Prosecution Had Established A Prima Facie Case Against The Accused That He Had Trafficked In A Dangerous Drug To Wit 182.2 Grams Of Methamphetamine

[25] The prosecution was seeking to prove the offence of trafficking by establishing that the accused was in actual possession of the drug found to wit 182.2 grams of Methamphetamine. Once the prosecution had proven that the accused was in actual possession of 182.2 grams of Methamphetamine, the prosecution was then relying on the presumption under s. 37(da)(xvi) of the Dangerous Drugs Act. Under s. 37(da)(xvi) of the Dangerous Drugs Act 1952 the accused is presumed in view of the quantity of Methamphetamine involved to have trafficked in Methamphetamine until the contrary is proved.

[26] To prove that the accused had actual possession of the dangerous drug in question, the prosecution had to prove that the accused had custody or control of the said drug and the accused had knowledge of the said drug.

[27] The prosecution in proving custody or control of the drugs, had brought in ample evidence that the drug was physically carried by the accused, that is, he was wearing a waist pouch which contained the proscribed drugs at the time of his arrest by SP5.

[28] The prosecution had further proven that the accused had knowledge of the contents of his waist pouch by adducing the evidence of the conduct of the accused, that is, he bolted when SP5 was examining his body and the waist pouch he was wearing. I am satisfied that the conduct of the accused running away when SP5 was examining his body and the waist pouch was relevant under s. 8 of the Evidence Act 1950 to show that he had knowledge of the contents of the waist pouch. There is no dispute that the proscribed drugs in this case after analysis was confirmed by the chemist SP4 to be 182.2 grams of Methamphetamine as listed under the First Schedule of the Dangerous Drugs Act 1952.

[29] I therefore find that the prosecution had successfully proved that the accused was in actual possession of the 182.2 grams of Methamphetamine independent of s. 37(d) of the Dangerous Drugs Act 1952.

[30] The amount of Methamphetamine being 182.2 grams will trigger the statutory presumption of trafficking under s. 37(da)(xvi) of the same Act.

Whether There Was A Break In The Chain Of Evidence In Relation To The Exhibits Seized

[31] The defence made no submission on the offence of trafficking but instead attacked the prosecution case on two main grounds. I shall deal with them one by one.

[32] The learned counsel submits that since it had been established through the evidence of the chemist SP4 that the drug Methamphetamine was listed under the First Schedule of the Dangerous Drug Act 1952 and also in the Appendix of the First Schedule under the sub heading: Analeptics and Central Stimulants of the Poisons Act 1952, two sets of evidence had arisen here, one in favour of the prosecution and the other in favour of the defence. Under such circumstances the learned counsel for the defence submits that the court should adopt the

evidence which is favourable to the accused by amending the charge to one of possession under s. 9 of the Poisons Act 1952. To support his contentions he cited the following authorities:

PP v. Poh Ah Kwang [2003] 2 CLJ 722.

PP v. Ang Soon Huat [1990] 1 LNS 103

Tai Chai Keh v. PP [1948] 1 LNS 122.

[33] Having perused the cases cited, with the greatest respect, I do not agree with the contention of the learned counsel for two reasons. Firstly, the principle laid down in *PP v. Ang Soon Huat* was that "where the court was left in doubt as to whether the accused has committed an offence in a lower or higher degree of seriousness, the court should make a finding in the lower degree, particularly where a finding in a higher degree will give rise to a mandatory sentence of death".

[34] The said principle is not applicable here because the aforesaid doubt as to the weight of the proscribed drug does not arise in our case. In fact, the prosecution had proven that the accused was in actual possession of 182.2 grams of Methamphetamine which amount had triggered the presumption under s. 37(da)(xvi) of the Dangerous Drugs Act 1952. Secondly, where the proscribed drug is listed under the first schedule of the Dangerous Drugs Act 1952 as well as under the First schedule of the Poisons Act, it is the prerogative of the public prosecutor to choose under which statute the charge is to be preferred. it is not for the court to direct the public prosecutor what to do or to amend the charge on its own accord. To do so would be tantamount to usurping the powers of the public prosecutor conferred under art. 145(3) of the Federal Constitution.

[35] For the above reasons, I find that the first ground of attack is without merit.

[36] The second ground raised by the defence was that there was a break in the chain of evidence that is the contents of the 16 plastic packets P7B (1-16) had been tampered with and the proscribed drug which was sent to the chemist for analysis was not the drug seized by SP5.

[37] The learned counsel had put forth numerous reasons to support his second ground of the defence. I shall now deal with some of the valid reasons given by the learned counsel.

(a) A serious doubt as to the identity of the exhibits had occurred due to the discrepancies in the physical exhibit that is methamphetamine in its colour. The discrepancies were as follows:

(i) SP5 the raiding officer described the proscribed drug in all the 16 plastic packets seized as 'warna bahan-bahan disyaki syabu adalah warna putih dalam bentuk ketulan' whereas the chemist SP4 described the said drug when he received it as 'bahan hablur tanpa warna'. The learned counsel submits that since no evidence had been adduced by the prosecution to explain the discrepancies in terms of colour, a serious doubt as to the identity of the exhibit had occurred.

(ii) There were discrepancies with regard to the colouring of the 16 plastic packets P7B (1-16) containing the proscribed drug. According to SP5, the raiding officer, all the 16 plastic packets containing the proscribed drug at the time of seizure were 'jerneh atau cerah'. When the 16 plastic packets P7B (1-16) were produced and shown to SP5, he said in court that the colour of the 16 plastic packets had turned to black.

(b) When SP5 was asked why all the 16 plastic packets had now turned to black, his answer was 'saya tak tahu dan tiada jawapan'. When SP5 was questioned further why he said 'saya tak tahu dan tiada jawapan' he said: 'mungkin terlalu lama, plastik itu jadi gelap'. The learned counsel urged the court to reject the explanation given by SP5 by referring the court to another plastic packet marked P7C supplied by the chemist SP4 which was put together with the 16 plastic packets in one same envelope marked P7 and the said plastic packet supplied by the chemist had not changed in colour. Again no valid explanation had been offered by the prosecution as to why the colour of the 16 plastic packets had now turned black. The learned counsel submits that taking these discrepancies, together, there were serious doubts as regards the identity of the drugs.

(c) There were further discrepancies in the 16 plastic packets containing the proscribed drug ie, P7B (1-16) particularly the two plastic packets marked B1 and B2. According to SP5, all the 16 plastic packets containing proscribed drug (P7B (1-16)) seized by him were sealed (not heat sealed) but could be opened with the hands. But when two plastic packets marked B1 and B2 from the 16 plastic packets were produced in court, the court had taken note that they were heatsealed and could not be opened with the hands. The learned counsel therefore submits that since no explanation was offered by the prosecution as to why the two plastic packets were heatsealed, serious doubt had arisen whether the 16 plastic packets (P7B (1-16)) which were seized by SP5 were the same exhibits tendered in court.

(d) A break in the chain of evidence in relation to the exhibits had taken place:

(i) When SP8 the I.O handed the exhibits to Bahagian D6 for fingerprint-dusting no evidence was led by the prosecution as to whom the exhibits were handed over to and for how long and who actually had the custody of the exhibits while the fingerprint-dusting was carried out and lastly who was the person who finally handed the exhibits back to SP8 after the finger print dusting was done.

(ii) SP8 did not say whether he had locked his cabinet when he had put all the exhibits which he had collected from Bahagian D6, after the fingerprint-dusting was done.

(e) Lastly the learned counsel submits that non-identification by the I.O SP8 of the exhibits tendered in court which form the subject matter of the charge is fatal to the prosecution case. Since SP8 the I.O was the person who received the exhibits from SP5 and handed them to the chemist and later collected the same from him and sent them to the exhibits store, he was the best person to clear the doubts which had arisen with regards to the identity of the exhibits in this case. Failure on the part of the prosecution to show the exhibits to SP8 for the purpose of identification had left a gap in the prosecution case.

[38] Having considered the reasons given by the learned counsel for the defence in support of the second ground, I am convinced that serious doubts as to the identity of the proscribed drug seized had been established by the defence.

[39] First, the defence had established that the colour of the proscribed drug at the time of seizure by SP5 was white but at the time when it was received by the chemist SP4 was colourless. This, to me, is a serious doubt as to the identity of the drug which must be explained by the prosecution. Unfortunately, no evidence was led by the prosecution to explain the difference in the colour of the proscribed drug.

[40] Secondly, the doubt as to the identity of the proscribed drug was further compounded by the fact that there was also a change in colour of the 16 plastic packets P7B (1-16) containing the proscribed drug from 'jerneh' to 'hitam'. I fully agree with the learned defence counsel's submission that the explanation given by SP5 as to why the plastic packets had turned 'black' should be rejected because a plastic bag P7C supplied by the chemist was put together with the 16 plastic packet in one same envelope marked P7 had not changed in colour. In fact, the best person to explain such a change in colour would be the I.O SP8. Sad to say that neither was the I.O SP8 asked to explain the change of colour of the 16 plastic packets nor was he shown the 16 plastic packets P7B (1-16) in court.

[41] The non explanation by the prosecution as to the change in colour of the proscribed drug and of the 16 plastic packets P7B (1-16) had resulted in a serious break in the chain of evidence. Thirdly, the above problem was further aggravated by the fact that the openings of the two of the 16 plastic packets P7B (1-16) marked B1 and B2 produced in court were found to be heatsealed. This was contrary to the testimony of SP5 who told the court that all the 16 plastic packets P7B (1-16) including the two above-mentioned plastic packets marked B1 and B2 were sealed but could be opened with hands. Going by the evidence of SP5, the crucial question to ask here is: who had tampered with the two plastic packets marked B1 and B2? Unfortunately, no explanation was given by the prosecution in this respect.

[42] Since serious doubts as to the identity of the drugs had been established by the defence, it is therefore, incumbent upon the prosecution to provide the necessary link in the chain of evidence in calling all the officers who had handled the exhibits. I find that the prosecution had failed in providing such a link when it failed to call the "anggota" who did the fingerprint-dusting on all the exhibits which he received from SP5. The missing link here is that no evidence had been led as to who the "anggota" was and for how long the exhibits were left with him for fingerprint-dusting before they were handed back to SP5.

Decision

[43] For the reasons given above, I therefore find that, on the second ground alone, the prosecution had failed to establish a *prima facie* case against the accused and defence should not to be called even though the accused was caught red-handed with the incriminating exhibits kept in his waist pouch. In the circumstances, I acquit and discharge the accused without calling upon him to enter his defence.